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UNITE HERE! Local 5 (Hyatt Corporation d/b/a Hyatt Regency Waikiki) and Mark Tamosiunas and Agnes Demarke and Wayne Young and Steven Taono. Cases 20–CB–127565 and 20–CB–127695

February 26, 2019

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

This case is on remand from the United States Court of Appeals for the District of Columbia Circuit. On August 25, 2016, the National Labor Relations Board issued a Decision and Order in this proceeding, adopting the judge’s finding that the Respondent did not violate Section 8(b)(1)(A) of the Act by mistakenly sending a letter to the Charging Parties and other nonmember unit employees seeking to collect dues for a period when no collective-bargaining agreement or union-security provision was in effect.¹ The letter also indicated that the Respondent had billed the Employer for the full union dues amount and that the deduction would be “reflected on an upcoming pay stub.”

In dismissing the complaint, the Board found that nonmember employees receiving the letter would have reasonably understood, in context, that it had been sent to them by mistake. *Id.*, slip op. at 1–2. The Charging Parties subsequently filed a petition for review with the D.C. Circuit. On June 15, 2018, the court found that the nonmember unit employees’ “exercise of their right not to pay full dues was forcibly restrained by the Dues Letter and the garnishment it expressly set in motion.”² *Tamosiunas v. NLRB*, 892 F.3d 422, 431 (D.C. Cir. 2018). The court disagreed with Board’s conclusion that reasonable employees would not “construe the Dues Letter’s multiple demands for an illegitimate payment, combined with a promise of forced withholding, as coercive.” *Id.* at 431–132 (citing *Service Employees Local 121RN (Pomona Valley Hospital Medical Center)*, 355 NLRB 234, 235 (2010)). The court vacated the Board’s decision and

remanded for further proceedings consistent with its opinion.

On September 6, 2018, the Board notified the parties that it had accepted the court’s remand and invited them to file statements of position. The General Counsel, the Charging Parties, and the Respondent each filed a statement of position.

The Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the entire record, including the parties’ statements of position, in light of the court’s decision, which we accept as the law of the case. Because that decision makes it clear that the Respondent’s letter “reasonably tended to coerce or restrain” nonmember unit employees “in the exercise of the statutory right to limit their association with the union,” we find that the Respondent violated Section 8(b)(1)(A) as alleged in the complaint.

CONCLUSIONS OF LAW

The Employer has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent has been a labor organization within the meaning of section 2(5) of the Act.

The Respondent violated Section 8(b)(1)(A) of the Act by notifying the Charging Parties and other similarly situated nonmember unit employees that they owed dues during a period when no collective-bargaining agreement or union-security provision was in effect and that dues and fees would be deducted from their wages by their Employer.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices in violation of Section 8(b)(1)(A) of the Act, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.³

ORDER

The National Labor Relations Board orders that the Respondent, UNITE HERE! Local 5, Honolulu, Hawaii, its officers, agents, and representatives, shall

¹ 364 NLRB No. 94 (2016).

² The General Counsel did not allege that the garnishment, refunded in the next paycheck, was unlawful.

³ We deny the Charging Parties’ request that the Board order the Respondent to “disgorge any dues it actually collected or received” as a result of its letter. The stipulation of facts submitted by the parties during the Board litigation establishes that the arrearages improperly deducted from the Charging Parties and similarly situated employees were refunded in the following paycheck, and that the General Counsel “does not allege that . . . the Charging Parties or any similarly-situated employee is owed any money arising out of the allegations set forth in the Amended Complaint.” Further, the Charging Parties did not raise this

argument on exceptions or in the course of the Board litigation, and we do not consider it now. The Charging Parties also request that the Respondent be required to mail the remedial notice directly to the Charging Parties and other similarly situated employees. We deny this request because the Charging Parties have not demonstrated that the Board’s traditional remedies are insufficient to remedy the effects of the Respondent’s unfair labor practice. *First Legal Support Services, LLC*, 342 NLRB 350, 350 fn. 6 (2004) (noting that special remedies, including mailing the notice to employees, are necessary only upon a showing that traditional remedies are insufficient to dissipate the effects of the unfair labor practices found).

1. Cease and desist from

(a) Notifying nonmember unit employees that they owe dues during a period when no collective-bargaining agreement or union-security provision is in effect, and that dues and fees will be deducted from their wages by their Employer.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its business offices and all meeting halls in Honolulu, Hawaii copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with employees whom it represents by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, sign and return to the Regional Director for Region 20 sufficient copies of the notice for posting by Hyatt Corporation d/b/a Hyatt Regency Waikiki, if willing, at all places at its Honolulu, Hawaii facility where notices to employees are customarily posted.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 20 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. February 26, 2019

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf
with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT notify nonmember unit employees that they owe dues during a period when no collective-bargaining agreement or union-security provision is in effect, or that dues and fees will be deducted from their wages by their Employer.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights listed above.

UNITE HERE! LOCAL 5

The Board's decision can be found at www.nlrb.gov/case/20-CB-127565 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the

United States Court of Appeals Enforcing an Order of the National Labor Relations Board."